

Proposed First Reading: July 27, 2012

Proposed Second Reading: August 24, 2012

Approved: August 24, 2012

Replace in its entirety:

CHAPTER 100 – LICENSING

§ 100-1. License requirement.

No person shall operate, maintain or otherwise engage in any business, occupation or activity designated hereafter in this chapter without first obtaining a license from the town. Licenses shall be issued only to allowable businesses, occupations or activities set forth in Chapter [160](#), Zoning **and shall pay the Town an annual fee as set by resolution of the Town Council from time to time.**

§ 100-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ESTABLISHMENT - A building or part thereof, or each motor vehicle, or each stand, at or from which any merchandise or commodities are dispensed, or facilities or services are provided, to members of the general public.

PERSON - Includes firms, companies, corporations, partnerships, associations, as well as individuals.

§ 100-3. License year.

The license year shall begin January 1 and end December 31 of each calendar year.

§ 100-4. License requirement before start of business.

Annual licenses must be obtained prior to opening, starting or continuing any business, occupation or activity as described in this chapter for any license year.

§ 100-5. Posting of licenses.

All licenses issued under this chapter shall be posted in a public place in the establishment, at the place of business for which it is issued, or, as the case may be, shall be carried on the person of the licensee.

§ 100-6. Form of license; records to be kept.

The Town shall prescribe the form of the establishment license certificate and vending and/or music machine license certificate to be issued to applicants and keep full and complete records of all licenses issued and the expiration dates thereof and the license fee charged.

§ 100-7. Determination of license class.

Whenever the Town Manager is unable to determine the class and fee for a license application, the Town Manager shall refer the application to the Town Council for disposition.

§ 100-8. License fees.

A. Any person engaged, for profit, in selling any and all merchandise and/or given commodities and/or in providing facilities, services, rental units and/or food service within the Town at or from any given establishment as follows **including but not limited to:**

- (1) Each establishment used as a restaurant or eating establishment or carry-out food establishment.
- (2) Each establishment used for real estate sales or rentals.
- (3) Each establishment for sale of any merchandise and/or commodities and/or combination thereof.
- (4) Each establishment used as a bank or lending institution.
- (5) Each concession that operates in Town and/or on the beach.

B. Any person within the Town engaged, for profit, in providing services for use or entertainment as follows shall pay the Town a fee as set by resolution of the Town Council from time to time:

- (1) For each person engaged in building, altering, repairing, remodeling, constructing and/or maintenance of buildings.
- (2) For each person providing services and/or materials doing business in the town.

C. Any person engaged for profit in renting motel/hotel rooms or suites of rooms, single-family dwellings, townhouses, apartments or any real property, or portion thereof, within the Town shall pay an annual license fee as set by resolution of the Town Council from time to time.

D. Each establishment offering for public use the following shall pay a fee as set by resolution of the Town Council from time to time:

(1) Vending machines/**dispensing machines**, subject to the conditions that all vending machines shall be permitted as a part of licensed establishments only and shall be operated by and under the control of the establishment licensee. **All** vending machines shall be located within buildings of licensed establishments or, if located outside such buildings, shall not project beyond the front building line or into the side or rear yards, and must be located not more than one foot from the exterior wall of such buildings.

- (a) Each drink, food or candy machine.
- (b) Each ice machine.
- (c) Each cigarette machine.
- (d) Each newspaper or U.S. Postage Stamp machine.
- (e) Dispensing machine other than provided in Subsection **D(1)(a), (b), (c) and (d)** above.

(2) Music machines operated by depositing money, slug or similar medium in the machine, subject to the conditions that all music machines shall be permitted as a part of licensed establishments only and shall be operated by and under the control of the establishment licensee, and all music machines shall be allowed only inside totally enclosed buildings of licensed establishments, and during operation of such machines all windows and doors shall be kept closed so that the sound cannot be heard outside the buildings.

(3) In order to preserve the peace and good order of the Town and the health, welfare and safety of the people of the town, coin-operated amusement machines in a single commercial establishment or any form of game machine, instrument or apparatus not prohibited under the law of the State of Delaware shall be permitted as a part of licensed establishments only and shall be operated under the control of the establishment licensee, shall be incidental and subordinate to the main business of the establishment for which the establishment is licensed, and all such machines shall be allowed only inside totally enclosed buildings of licensed establishments, and the number of such machines shall be limited to three such machines per licensed establishment.

(4) Children's riding amusements shall be permitted in a single commercial establishment only. They shall be permitted as a part of the licensed establishment and shall be operated under the control of the establishment licensee, shall be incidental and subordinate to the main business of the establishment for which the establishment is licensed. The number of such shall be limited to one per licensed establishment. The children's riding amusements are limited to small electrically operated devices built for a maximum of four children. Such devices may include a riding horse, stagecoach or a rocket, but **do** not include the multi-child rides customarily located in an amusement park.

E. All of the above license fees in this subsection shall be in addition to any establishment license fees. Any person engaged for profit in providing services within the town, which services provided in the Town of Fenwick Island and elsewhere gross \$1,500 or less annually shall **not** pay an annual fee to the Town as set by resolution of the Town Council from time to time:

(1) Nonresidents of the Town of Fenwick Island.

(2) Residents and property owners of the Town of Fenwick Island: no fee; however, all provisions of Chapter [160](#), Zoning, concerning Residential Zone restrictions shall be adhered to.

F. Persons engaged in the delivery only of unmetered commodities and/or material; as well as persons engaged in providing at the properties of the property owners of the Town professional services, including and limited to health services and land-surveying services for which the State of Delaware requires certification and a license, shall not be required to obtain a Town license.

§ 100-9. Applications for licenses.

A. Applications for establishment licenses shall be addressed to the Town in writing, verified by oath or affirmation signed by the applicant. Each applicant shall give the following information:

(1) The home or business address of the applicant.

(2) If the applicant is a partnership, the names and addresses of the individuals composing the partnership.

(3) If the applicant is a corporation, the names and addresses of the principal officers of the corporation.

(4) A full description of the nature of the business or enterprise for which the license is required.

(5) A plot plan of the premises if the license fee is determined by the square footage, together with the calculation of the area.

(6) A statement that the applicant has complied with all laws and ordinances of the Town of Fenwick Island and that all taxes and assessments due the Town of Fenwick Island upon the property which the licensee will operate, if any, are paid.

(7) Authorization for the town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

(8) Written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, with said application being duly dated and signed in the town.

(9) In the case of a license application for vending, music or amusement machines, an itemized list of all machines to be licensed and the name of the licensed establishment where the machines are to be used.

(10) In the case of an application by a property owner for a business license to rent a single-family dwelling, townhouses, or apartment, and in the case of an application by a realtor for a business license, a statement that the applicant will inform all prospective tenants of the maximum overnight occupancy for each dwelling, townhouse, or apartment, such maximum not to exceed 12 persons, and that the applicant will assure compliance with such maximum occupancy. **Prior to the issuance of a license, each property owner must also complete any and all application forms required by the Town, including, but not limited to, the Declaration of Property Status for Rental and Non-Rental Property Owners form.**

(a) Property owners who provide the town, by December 31, 2001, satisfactory written documentation that they offered and contracted, prior to June 22, 2001, to rent their single-family dwelling during the calendar year 2001 with a specific overnight maximum occupancy of more than 12 persons will be allowed to continue such practice for a period of up to two years starting January 1, 2002.

B.

(Reserved)

§ 100-10. When taxes or assessments are due.

No license shall be issued under this chapter to be used upon the premises upon which any taxes or assessment due the Town of Fenwick Island are due but not paid.

§ 100-11. License business to be lawful.

It shall be a condition to the issuance of any and all licenses under this chapter that the business, occupation or activity licensed shall be used and operated only for lawful purposes. The right of the Town Council of Fenwick Island, Delaware, in its discretion, to refuse to grant any license and to revoke any license previously granted is hereby specifically reserved.

§ 100-12. Issuance or refusal of license.

A. Upon the receipt of an application completed in good order, the Town Manager shall examine such application and shall ascertain by such examination whether the activities indicated and described are in accordance with the requirements of this chapter and all other pertinent laws and ordinances.

B. If the Town Manager is satisfied that the activities described in the application for license and the information filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, the Town Manager shall issue a license to the applicant.

C. If the application for a license describes an activity or contains information which does not conform to the requirements of this chapter or other pertinent laws or ordinances, the Town Manager shall not issue a license, but shall return the application to the applicant with his refusal to issue such license. Such refusal shall, when requested, be in writing and shall contain the reasons therefor.

§ 100-13. Charitable institutions.

No license fee shall be charged for a license issued to a charitable or public service institution, association, club or body not organized and conducted for private gain, nor shall the Town be charged for licenses.

§ 100-14. Suspension or revocation of license.

A. Any license issued pursuant to this chapter shall be subject to suspension or revocation by the Town Manager for violation of any provision of this chapter or for any grounds that would warrant the denial or issuance of such license in the first place. The Town Manager, upon revocation or suspension, shall state his reasons in writing and specify the particular grounds for such revocation or suspension.

B. In the case of a rental license issued to a single-family residential property owner, such license may be revoked if there been three or more cases during a calendar year of violations of either § 100-9A(10) of this chapter (overnight occupancy by more than 12 persons) or § 107-2A of Chapter 107 (noise disturbance). Oral and written notice of each such violation will be given to the licensed property owner and his/her realtor. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

C. In the case of a mercantile license for a realtor, which license includes the renting of single-family residential properties on behalf of property owners, an application for such a license to rent in a given calendar year will be denied if, in the previous calendar year, the licenses for three or more rental properties under a realtor's management were revoked according to the conditions specified in Subsection B above.

§ 100-15. Violations and penalties.

Whoever shall violate any provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$200. Each day that a business, occupation or activity is carried on, prosecuted, conducted or engaged in without a proper license having been obtained pursuant to this chapter shall be deemed to be a separate offense. *In accordance with § 160-9A(10), each property owner must also complete any and all application forms required by the Town, including, but not limited to, obtaining a Town rental license and submitting the Declaration of Property Status for Rental and Non-Rental Property Owners form. A violation of the rental licensing provisions of the Town's Code shall result in a fine of 200.00 for each day that the violation exists.*

§ 100-16. Appeals.

Any person aggrieved by a decision of the Town Manager may, within 15 days, take a written notice of appeal to the Town Manager. Upon payment of a fee as set by resolution of the Town Council, the Town Manager shall forward the appeal and all paperwork to the Secretary of Town Council who shall set a date, time and place of the hearing of the appeal no more than 15 days from the receipt of the appeal. Notice of the appeal shall be sent to the appellant and published in a newspaper of local circulation at least seven days prior to the scheduled hearing.

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